

## **Frequently Asked Questions Relating to Iranian General License D-1**

On May 30, 2013, the Department of the Treasury, in consultation with the Departments of State and Commerce, issued General License D (“GL D”) authorizing the export and reexport to Iran of certain hardware, software, and services incident to personal communications. On February 7, 2014, the Department of the Treasury, in consultation with the Departments of State and Commerce, issued amended Iranian General License D-1 (“GL D-1”), which clarifies certain aspects of GL D and adds certain new authorizations. Effective February 7, 2014, GL D-1 replaces and supersedes in its entirety GL D.

### **GENERAL QUESTIONS**

#### **1. What are key changes made by amended General License D-1?**

First, GL D-1 expands the authorization in GL D to permit the exportation, reexportation, or provision, directly or indirectly, to Iran of certain personal communications software, hardware, and related services subject to the Export Administration Regulations, 15 C.F.R. parts 730 through 774 (“EAR”) (rather than just the exportation or reexportation from the United States or by a U.S. person of such software, hardware, and services). *See* GL D-1, paragraphs (a)(2)(i) & (a)(3). For purposes of GL D-1, the term “provision” could include, for example, an in-country transfer of covered software or hardware. The general license now authorizes, for example, a non-U.S. person located outside the United States to export certain hardware and software subject to the EAR to Iran. *See* FAQ #5.

Second, GL D-1 adds new authorizations for the exportation, reexportation, or provision, directly or indirectly, by a U.S. person located outside the United States to Iran of certain software and hardware not subject to the EAR. *See* GL D-1, paragraphs (a)(2)(ii) & (a)(3). The general license now authorizes, for example, a U.S. company to export to Iran, from a location outside the United States, certain hardware or software that is not subject to the EAR (including foreign-origin hardware or software containing less than a *de minimis* amount of U.S. controlled content). *See* FAQ #6.

Third, a new Note has been added to paragraphs (a)(2) and (a)(3) clarifying that the authorization in those paragraphs includes the exportation, reexportation, or provision, directly or indirectly, of the authorized items by an individual leaving the United States for Iran. GL D-1 also adds a new authorization for the importation by an individual into the United States of certain hardware and software previously exported by the individual to Iran pursuant to other provisions of GL D-1 or 31 C.F.R. § 560.540. *See* GL D-1, paragraph (a)(5). The general license now authorizes, for example, an individual to carry a smartphone that falls within the scope of the GL D-1 authorization while traveling to and from Iran. *See* FAQ #7.

Finally, to further ensure that the sanctions on Iran do not have an unintended chilling effect on the willingness of companies to make available certain publicly available, no cost personal communications tools to persons in that country, GL D-1 adds a new authorization

related to the potential recipients of certain publicly available, no cost services and software. *See* GL D-1, paragraph (a)(6).

Notwithstanding these changes, nothing in this general license relieves an exporter from compliance with the export license requirements of another Federal agency.

**2. With respect to the authorizations in paragraphs (a)(1) and (a)(2), what services and software are covered?**

Qualifying services or software must be “incident to the exchange of personal communications over the Internet.” In addition, qualifying software under paragraph (a)(2) must meet the stated export control-related criteria. Both paragraphs provide an illustrative but not exhaustive list of the types of services that are authorized: “instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging.” *See* FAQ #8 and OFAC’s Interpretive Guidance and Statement of Licensing Policy on Internet Freedom in Iran (March 20, 2012), available at [http://www.treasury.gov/resource-center/sanctions/Programs/Documents/internet\\_freedom.pdf](http://www.treasury.gov/resource-center/sanctions/Programs/Documents/internet_freedom.pdf).

Qualifying services or software need not be specifically listed in the Annex in order to be authorized by paragraphs (a)(1) or (a)(2), provided that they otherwise meet the requirements of paragraphs (a)(1) or (a)(2).

**3. With respect to the authorization in paragraph (a)(3), do exporters need to make a determination as to whether an export of an item or service listed in the Annex to GL D-1 is “incident to personal communications”?**

No. The Annex lists software, hardware, and related services determined to be “incident to personal communications” for purposes of the authorization in paragraph (a)(3) of GL D-1.

**4. What should I do if I am unsure whether an item or service is covered by GL D-1?**

If you require assistance interpreting the authorizations contained in GL D-1 and how they apply to your situation, please contact OFAC’s Licensing Division online at <http://www.treasury.gov/resource-center/sanctions/Pages/licensing.aspx>, by phone at 202-622-2480, or by email at [ofac\\_feedback@do.treas.gov](mailto:ofac_feedback@do.treas.gov).

**5. May a non-U.S. person export, reexport, or provide to Iran hardware and software that is subject to the EAR pursuant to GL D-1?**

Yes, for purposes of the authorities administered by OFAC, amendments made by GL D-1 authorize the exportation, reexportation, or provision of certain hardware and software subject to the EAR by non-U.S. persons outside the United States. *See* GL D-1, paragraphs (a)(2)(i) & (a)(3). For example, a non-U.S. person manufacturer of smartphones that are (a) subject to the EAR because they contain more than a *de minimis* amount of U.S. controlled content and (b) within the scope of the GL D-1 authorization may export the smartphones from its third-country manufacturing facility directly or indirectly to Iran. *See* FAQ #1.

**6. Does GL D-1 authorize U.S. persons located outside the United States to export or reexport to Iran certain specified hardware or software that is not subject to the EAR?**

Yes. Amendments made by GL D-1 authorize the exportation, reexportation, or provision to Iran by U.S. persons located outside of the United States of certain specified hardware and software items that are not subject to the EAR. *See* GL D-1, paragraphs (a)(2)(ii) & (a)(3). GL D-1 also extends this authorization to an entity owned or controlled by a U.S. person and established or maintained outside the United States (“a U.S.-owned or -controlled foreign entity”), subject to the conditions set forth in 31 C.F.R. § 560.556. *See* GL D-1, Note 2 to paragraph (a). Under these amendments, for example, an overseas branch of a U.S. company or a U.S.-owned or -controlled foreign entity may export to Iran, from a location outside the United States, certain hardware or software that is not subject to the EAR (including foreign-origin hardware or software containing less than a *de minimis* amount of U.S. controlled content) if the hardware or software is within the scope of the GL D-1 authorization. These amendments also authorize the exportation, reexportation, or provision of certain fee-based software that is not subject to the EAR because it is described in section 734.3(b) of the EAR. *See* FAQ #1. Section 734.3(b) of the EAR describes “publicly available” software for purposes of those regulations.

**7. Does GL D-1 authorize the exportation to Iran and importation into the United States of personal communication devices by persons travelling from the United States to Iran and back to the United States?**

Yes. As amended, GL D-1 authorizes both the exportation, reexportation, or provision to Iran and the importation into the United States by an individual entering the United States directly or indirectly from Iran, of software authorized by 31 C.F.R. § 560.540 paragraph (a)(2) and software and hardware authorized by paragraphs (a)(2) and (a)(3) of GL D-1, provided that the items were previously exported, reexported, or provided by the individual to Iran. *See* GL D-1, paragraph (a)(5) and the Note to paragraphs (a)(2) and (a)(3). *See* FAQ #1.

**8. How do the authorizations in paragraphs (a)(1), (a)(2), and (a)(6) of GL D-1 compare to the previously existing general license in 31 C.F.R. § 560.540 authorizing certain services and software incident to Internet-based communications?**

The general license in § 560.540 authorizes the exportation from the United States or by U.S. persons, wherever located, to persons in Iran of no-cost services incident to the exchange of personal communications over the Internet and no-cost software necessary to enable such services. Please also *see* OFAC’s Interpretive Guidance and Statement of Licensing Policy on Internet Freedom in Iran (March 20, 2012). *See* [http://www.treasury.gov/resource-center/sanctions/Programs/Documents/internet\\_freedom.pdf](http://www.treasury.gov/resource-center/sanctions/Programs/Documents/internet_freedom.pdf). Paragraphs (a)(1) and (a)(2) of GL D-1 go beyond § 560.540 by, among other things, authorizing fee-based services and software incident to the exchange of personal communications over the Internet.

In addition, to further ensure that the sanctions on Iran do not have an unintended chilling effect on the willingness of companies to make available certain publicly available, no cost personal communications tools to persons in Iran, pursuant to paragraph (a)(6) of GL D-1, the exportation, reexportation, or provision to the Government of Iran of certain publicly available, no-cost services and software described in § 560.540(a) or categories (6) through (11) of the Annex to GL D-1 is authorized. U.S. persons continue generally to be prohibited from exporting goods and services to persons whose property and interests in property are blocked pursuant to any part of 31 C.F.R. chapter V, other than Government of Iran end-users blocked solely pursuant to Executive Order 13599. *See* GL D-1 paragraph (b)(2). Prohibited end-users include Iranian persons whose property and interests in property are blocked pursuant to OFAC authorities relating to WMD proliferation, terrorism, and human rights abuses. In addition, GL D-1 does not authorize any action or activity involving any item (including information) subject to the EAR that is prohibited by, or otherwise requires a license under, part 744 of the EAR or participation in any transaction involving a person whose export privileges have been denied pursuant to part 764 or 766 of the EAR, without authorization from the Department of Commerce.

**9. How can U.S. companies arrange for payment from Iran for exports authorized under GLD-1?**

In general, the payment requirements under GL D-1 are the same as for all other general licenses under the Iranian Transactions and Sanctions Regulations (“ITSR”). Section 560.516 of the ITSR authorizes U.S. depository institutions to process transfers of funds to or from Iran, or for the direct or indirect benefit of persons in Iran or the Government of Iran, if the transfer arises from, and is ordinarily incident and necessary to give effect to, an underlying transaction that has been authorized by a specific or general license issued pursuant to the ITSR and does not involve debiting or crediting an Iranian account. 31 C.F.R. § 560.516(a).

**10. What kind of due diligence is required for the exportation of fee-based services, software, or hardware authorized by GL D-1?**

Due diligence programs should be tailored to the particular risks encountered by exporters. As a general matter, companies selling fee-based services, software, or hardware authorized by GL D-1 should undertake reasonable, risk-based measures designed to ensure that they do not export their products to persons whose property and interests in property are blocked pursuant to any sanctions program administered by OFAC, regardless of whether the Government of Iran or other end-user appears on OFAC’s list of Specially Designated Nationals and Blocked Persons.

**11. Are there any restrictions as to the use of the Farsi language in authorized advertising or software?**

U.S. sanctions on Iran do not impose any restrictions as to the use of the Farsi language.

**12. May U.S. persons employ agents in Iran to facilitate sales, create or fund a physical sales presence on the ground in Iran, or utilize Iranian commercial marketing services in furtherance of exports authorized under GL D-1?**

No. GL D-1 does not authorize the employment of persons in Iran to facilitate sales, the maintenance of a physical sales presence in Iran, or the utilization of Iranian marketing services. However, certain copy-ready advertising materials are exempt from the prohibitions of the ITSR to the extent they qualify as information or informational materials pursuant to 31 C.F.R. § 560.210(c).

**QUESTIONS AS TO SPECIFIC SOFTWARE, HARDWARE, AND SERVICES**

**13. Are all applications designed to run on mobile operating systems (“apps”) covered by GL D-1?**

Amendments made by GL D-1 clarify that the exportation to Iran of apps that are designated EAR99 or classified under export control classification number (“ECCN”) 5D992.c, as specified in category (8) of the Annex to GL D-1, is authorized under GL D-1, including apps downloaded via online app stores.

**14. Is the exportation of anti-virus, anti-malware, anti-tracking, and anti-censorship software authorized?**

Yes. Paragraph (a)(3) of GL D-1 authorizes the exportation of certain anti-virus, anti-malware, anti-tracking, and anti-censorship software, as specified in categories (6), (7), and (9) of the Annex.

**15. What do Secure Socket Layers (SSLs), listed in the Annex to GL D-1, encompass?**

Amendments made by GL D-1 to category (11) of the Annex clarify that SSLs encompass “[p]rovisioning and verification software for Secure Socket Layer (SSL) certificates designated EAR99 or classified under ECCN 5D992.c, and services necessary for the operation of such software.” Additional provisioning and verification software not subject to the EAR may be included under the new GL D-1 authorization for, in relevant part, software not subject to the EAR that is exported or reexported, directly or indirectly, by a U.S. person located outside the United States, that is of a type described in the Annex to GL D-1 provided that it would be eligible for classification under an ECCN listed in the Annex (here, ECCN 5D992.c), or designated as EAR99, if it were subject to the EAR.

**16. Are mobile phone accessories and computer accessories and peripherals authorized for export under GL D-1?**

Yes. Amendments made by GL D-1 clarify that accessories for use in conjunction with hardware specified in categories (1) and (5) of the Annex and peripherals for use in conjunction with hardware specified in category (5) are authorized for export to Iran under GL D-1. Authorized accessories for mobile phones include headsets, cases, holsters, mounts, chargers,

docks, display protectors, cables, adapters, and batteries. Authorized accessories for computers include keyboards and mice; authorized peripherals for computers include consumer disk drives and other data storage devices. As set forth in a note to the Annex to GL D-1, for the purposes of the Annex, the term “consumer” refers to items that are: (1) generally available to the public by being sold, without restriction, from stock at retail selling points by means of any of the following: (a) over-the-counter transactions; (b) mail order transactions; (c) electronic transactions; or (d) telephone call transactions; and (2) designed for installation by the user without further substantial support by the supplier.

**17. Is the exportation of parts or components for authorized hardware, such as microprocessors, authorized under GL D-1?**

No. While the exportation of certain accessories and peripherals specified in categories (1) and (5) of the Annex is authorized under paragraph (a)(3) of GL D-1, the exportation of hardware parts or components is not. Requests for specific licenses to export parts or components, including replacement parts, will be considered on a case-by-case basis.

**18. Does GL D-1 authorize the export of bundled software that includes both software authorized by GL D-1 and software that is not authorized by GL D-1?**

No. To qualify for GL D-1, all individual software items in a bundled package must fall within one of the GL D-1 authorizations. If some software in a bundled package is authorized by GL D-1, but other software is not, the portion of the software falling outside the authorizations in GL D-1 would need to be otherwise exempt or authorized or would require a specific license for export. For example, a bundle of software that included exclusively software authorized by GL D-1 and by ITSR § 560.540 could be exported.

**19. Does GL D-1 authorize the exportation to Iran of fee-based desktop publishing software and productivity software suites used to publish documents, presentations, spreadsheets, charts, music, movies, and digital images?**

Yes. Fee-based desktop publishing software and productivity software suites have been determined to fall within the scope of fee-based software necessary to enable services incident to the exchange of personal communications as described in paragraph (a)(2) of GL D-1, provided that the software meets the additional criteria in that paragraph (*e.g.*, for software subject to the EAR, the software is designated EAR99 or is classified by the U.S. Department of Commerce on the Commerce Control List, 15 C.F.R. part 774, supplement No. 1 (“CCL”) under ECCN 5D992.c). By contrast, enterprise management software has been determined not to fall within the scope of fee-based software necessary to enable services incident to the exchange of personal communications as described in paragraph (a)(2) of GL D-1.

**20. Does GL D-1 authorize the exportation of fee-based cloud computing services to Iran?**

Yes. Paragraph (a)(1) of GL D-1 authorizes the exportation to Iran of fee-based cloud computing services incident to the exchange of personal communications over the Internet. In

addition, paragraphs (a)(2)(i) and (a)(3) authorize software necessary to enable such services, provided that such software is designated EAR99 or classified by the U.S. Department of Commerce on the CCL under export control classification number (“ECCN”) 5D992.c or, in the case of software that is not subject to the EAR, would be designated EAR99 if it were located in the United States or would meet the criteria for classification under ECCN 5D992.c if it were subject to the EAR.

**21. For purposes of category (5) of the Annex to GL D-1, what would be considered “software required for effective consumer use” of personal computing devices, laptops, and tablets?**

“Software required for effective consumer use” consists of software essential to the operation of the hardware listed in category (5) of the Annex to GL D-1, including, for example, drivers and patches. Operating systems are separately authorized in category (5) of the Annex to GL D-1.

**22. What are “residential consumer” satellite terminals and transceiver equipment?**

Satellite terminals and other equipment listed in category 4 of the Annex to GL D-1 shall be deemed “residential consumer” if the equipment is designated EAR99 or classified under ECCN 5A992.c, 5A991.b.2, or 5A991.b.4 or, in the case of equipment that is not subject to the EAR, would be designated EAR99 if it were located in the United States or would meet the criteria for classification under ECCN 5A992.c, 5A991.b.2, or 5A991.b.4 if it were subject to the EAR.